

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 AUSTIN DIVISION

3 JENNIFER VIRDEN ) Docket No. A 21-CA-271 RP  
4 vs. )  
5 CITY OF AUSTIN, TEXAS ) Austin, Texas  
6 ) February 1, 2022

7 TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE  
8 BEFORE THE HONORABLE ROBERT L. PITMAN

9 APPEARANCES:

10 For the Plaintiff: Mr. Jerad W. Najvar  
11 Najvar Law Firm  
12 2180 North Loop West, Suite 255  
13 Houston, Texas 77018

14 For the Defendant: Mr. Max Renea Hicks  
15 Law Office of Max Renea Hicks  
16 P.O. Box 303187  
17 Austin, Texas 78703

18 Court Reporter: Ms. Lily Iva Reznik, CRR, RMR  
19 501 West 5th Street, Suite 4153  
20 Austin, Texas 78701  
21 (512)391-8792

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25 Proceedings reported by computerized stenography,  
transcript produced by computer-aided transcription.

09:49:41 1 THE COURT: This is Judge Pitman. Thank you so  
09:49:42 2 much for calling in today. I'm going to ask the clerk to  
09:49:45 3 call the case and if you could make announcements for the  
09:49:45 4 record.

09:49:48 5 THE CLERK: A-21-CV-271, Jennifer Virden vs. City  
09:49:53 6 of Austin, for telephone conference.

09:49:58 7 MR. NAJVAR: I'm sorry. This is Jerad Najvar for  
09:50:01 8 the plaintiff.

09:50:02 9 MR. HICKS: And Renea Hicks for Defendant City of  
09:50:05 10 Austin.

09:50:05 11 THE COURT: And good morning again. Thank you  
09:50:07 12 for calling in today.

09:50:08 13 Just wanted to get both of you on the line to  
09:50:11 14 talk about where we are in the case and what you need from  
09:50:14 15 us next. It occurred to me that we might -- given the  
09:50:20 16 events of the past few months that we might be back in  
09:50:30 17 position of needing to set a scheduling order in the case,  
09:50:33 18 but I wanted to just check in with you, get your  
09:50:36 19 perspective on where we go from here.

09:50:37 20 Mr. Najvar, do you have -- do you want to kind of  
09:50:41 21 give us your perspective?

09:50:45 22 MR. NAJVAR: Yes, your Honor.

09:50:46 23 I think -- yeah, I mean, I think where we are is  
09:50:49 24 like you said, we probably should enter a scheduling order  
09:50:52 25 and, you know, I'd imagine that the city wants a little

09:50:55 1 time for discovery and Virden would, as well. So -- but I  
09:51:03 2 think the discovery period can be pretty short, at least  
09:51:07 3 the way I look at the case, because it's primarily legal  
09:51:12 4 issues, but you know, there's always factual underpinnings  
09:51:15 5 to those arguments.

09:51:16 6 So, I mean, I would -- I'm thinking a short  
09:51:20 7 discovery period, maybe 60, 90 days is what I would  
09:51:24 8 suggest to Mr. Hicks and to the Court. But, you know, so  
09:51:28 9 I'd suggest what I'd like to do is maybe come up with a  
09:51:32 10 scheduling order that, you know, sets out a pretty brisk  
09:51:37 11 schedule so we can move forward with, you know, I guess,  
09:51:42 12 disclosures and -- or maybe not even disclosures. I think  
09:51:46 13 in the Zimmerman case, we might have sort of foregone the  
09:51:52 14 disclosure period and just went into a short discovery  
09:51:54 15 period.

09:51:54 16 But, you know, that's basically where I am just,  
09:51:58 17 you know, I think a short period for discovery and then,  
09:52:01 18 we'll probably both file dispositive motions, I would  
09:52:03 19 think.

09:52:05 20 THE COURT: Okay. Mr. Hicks, leaving the details  
09:52:09 21 for negotiation between the two of you, do you generally  
09:52:12 22 agree that that will be a way forward?

09:52:15 23 MR. HICKS: I'm not so sure. I'm not sure why it  
09:52:19 24 has to be a short -- we had a short discovery period in  
09:52:22 25 the Zimmerman case, for instance, because Judge Yeakel

09:52:28 1 collapsed the preliminary injunction hearing and the final  
09:52:30 2 pretrial in one proceeding so that was different than here  
09:52:33 3 where we've already gone past the preliminary injunction  
09:52:36 4 phase.

09:52:37 5 We have -- I mean, Mr. Najvar and I haven't had  
09:52:41 6 the Rule 26(f) conference that we were supposed to have.  
09:52:44 7 So that seems to at least hash out some of the details  
09:52:49 8 here, timing and things like that, to see if we might  
09:52:51 9 agree. I generally agree that this is -- there is a  
09:52:54 10 chance this can be handled on dispositive motions after  
09:52:57 11 discovery, but one of the things that I have to do is to  
09:53:02 12 evaluate the need for an expert, whether to retain one. I  
09:53:08 13 have to double check with the city obviously to see if we  
09:53:10 14 could spend the money on it. If I decide that, I think  
09:53:14 15 that's the best way to go. So that's a little bit of  
09:53:17 16 work.

09:53:18 17 I don't -- I'm not opposed to moving at a decent  
09:53:23 18 pace. I don't see the need for moving at that rapid pace,  
09:53:28 19 accelerated pace. I'm assuming that -- I mean, we're in  
09:53:33 20 the middle of a campaign now. Not in the middle of but  
09:53:37 21 the beginning of, really, campaign for mayor's race that  
09:53:42 22 starts -- I mean, that ends November 8th maybe. Could be  
09:53:46 23 in a runoff back into mid-December, finish canvassing. So  
09:53:51 24 this particular election phase won't even be complete  
09:53:55 25 until basically the end of this year. So I don't know

09:53:57 1 that we need to hurry in advance of that because I don't  
09:54:01 2 think there's any fundraising window issue until after the  
09:54:06 3 completion of this race in terms of the fundraising for  
09:54:10 4 the next race. But that's something that Mr. Najvar and I  
09:54:14 5 can talk about in the Rule 26(f) conference.

09:54:16 6 Let me just mention one other thing here. I've  
09:54:19 7 got -- or two other things, really. I've got two trials  
09:54:25 8 set potentially. One definitely set and the other one  
09:54:29 9 like may be set and I just wanted to mention that while  
09:54:33 10 we're here. One would be roughly a two-week trial out in  
09:54:37 11 El Paso. It's one of the redistricting cases, starting  
09:54:41 12 September 28th in the three-judge court there that Judge  
09:54:44 13 Judge Guaderrama is presiding over. So I have to work  
09:54:47 14 around that.

09:54:48 15 Plus I have a original jurisdiction case in the  
09:54:52 16 U.S. Supreme Court involving the Rio Grande River where I  
09:54:55 17 represent not a party but an enhanced amicus, I guess is  
09:54:59 18 the term we've used, and that's if certain settlement  
09:55:03 19 discussions that are underway don't complete by -- soon,  
09:55:08 20 we'll have a trial that will last maybe a month or nearly  
09:55:11 21 a month starting in mid-August likely. So I have to work  
09:55:15 22 around those two things and one of them's not even firmed  
09:55:17 23 up yet.

09:55:18 24 So I just have some scheduling issues I need to  
09:55:21 25 discuss, I think initially, with Mr. Najvar in the Rule

09:55:28 1 26(f) conference that we have to have before doing  
09:55:30 2 disclosures or waiving them, or whatever. And I just  
09:55:32 3 wanted to mention all that so everybody understands at  
09:55:38 4 least my scheduling situation now and my view about the  
09:55:40 5 schedule for this.

09:55:42 6 THE COURT: Sure. Okay. Well, I don't want to  
09:55:46 7 get into the weeds and get involved in something that the  
09:55:47 8 two of you, I'm sure, will be able to resolve on your own,  
09:55:52 9 taking into account your respective needs and preferences.

09:55:56 10 So what I'll do then is why don't you have your  
09:56:00 11 Rule 26 conference, get that kicked off and start moving  
09:56:07 12 toward filing a scheduling order, and you know, sometime,  
09:56:13 13 let's say, within 30 days, get us a scheduling order. And  
09:56:18 14 if you do have difficulty reaching agreement, we can have  
09:56:25 15 another phone conference about that. But obviously it's  
09:56:29 16 always my preference to get a joint scheduling order, not  
09:56:33 17 referee dates for you. So let me let you give that an  
09:56:38 18 opportunity first and if you hit a snag, then I'll get  
09:56:43 19 involved at that point.

09:56:44 20 Does that sound okay with you, Mr. Najvar?

09:56:47 21 MR. NAJVAR: Yes, your Honor.

09:56:48 22 THE COURT: Okay. Mr. Hicks?

09:56:49 23 MR. HICKS: Yes.

09:56:50 24 THE COURT: Great. Anything else we need to talk  
09:56:52 25 about today then? All right. Well, we look forward to

09:56:58 1 hearing from you within 30 days of today, then we'll  
09:57:04 2 reconvene on the phone and talk about what you've proposed  
09:57:08 3 and get some -- get an order entered and we'll go from  
09:57:11 4 there.

09:57:13 5 MR. HICKS: Thank you, your Honor.

09:57:14 6 THE COURT: Thank you so much. Have a great day.

09:57:16 7 MR. NAJVAR: Thank you, your Honor.

8 (Proceedings concluded.)

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UNITED STATES DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Certified Realtime Reporter,  
Registered Merit Reporter, in my capacity as Official  
Court Reporter of the United States District Court,  
Western District of Texas, do certify that the foregoing  
is a correct transcript from the record of proceedings in  
the above-entitled matter.

I certify that the transcript fees and format comply  
with those prescribed by the Court and Judicial Conference  
of the United States.

WITNESS MY OFFICIAL HAND this the 26th day of October,  
2023.

*Lily Iva Reznik*  
~~~~~  
*LILY I. REZNIK, CRR, RMR*  
*Official Court Reporter*  
*United States District Court*  
*Austin Division*  
*501 West 5th Street,*  
*Suite 4153*  
*Austin, Texas 78701*  
*(512) 391-8792*  
*SOT Certification No. 4481*  
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